

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	No.
)	
v.)	Violations: Title 18, United
)	States Code, Sections 2, 666,
STUART LEVINE,)	1001, 1341, 1343, 1346, 1951,
JACOB KIFERBAUM,)	1956, and 1957
P. NICHOLAS HURTGEN)	

COUNT ONE

The SPECIAL MARCH 2004 GRAND JURY charges:

1. At times material to this indictment:

Relevant Entities and Individuals

a. The Finch University of Health Sciences/Chicago Medical School ("Chicago Medical School" and "CMS"), now known as the Rosalind Franklin University of Medicine and Science, was a not-for-profit private educational institution located in North Chicago, Illinois. The Chicago Medical School built an addition to its facilities in or about 2001, and built student housing in or about 2002.

b. The Northshore Supporting Organization ("NSO") was a charitable trust established to support and operate for the benefit of the Chicago Medical School.

c. Mercy Health System Corporation ("Mercy Hospital") was a not-for-profit corporation located in Janesville, Wisconsin that operated hospitals and provided health care services to the public in Wisconsin and Illinois.

d. Edward Hospital, which was part of Edward Health Services Corporation, (collectively referred to as "Edward

Hospital"), was a not-for-profit corporation located in Naperville, Illinois that operated a hospital and provided health care services to the public.

e. The Illinois Health Facilities Planning Board ("Planning Board") was a commission of the State of Illinois, established by statute, whose members were appointed by the Governor of the State of Illinois. State law required an entity seeking to build a hospital, medical office building, or other medical facility in Illinois to obtain a permit, known as a "Certificate of Need" ("CON"), from the Planning Board prior to beginning construction.

f. Defendant STUART LEVINE was an attorney and businessman, whose business interests included S.L. Investment Enterprises, L.P. In addition, LEVINE was:

i. A member of the Illinois Health Facilities Planning Board. In that capacity he owed a duty of honest services to the Planning Board, the State of Illinois, and the people of the State Illinois.

ii. A member of the Board of Trustees of the Chicago Medical School, and he was the Chairman of the Real Estate Committee. In that capacity, he owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

iii. A trustee of the NSO. In that capacity he owed a fiduciary duty and a duty of honest services to the NSO.

g. Defendant JACOB KIFERBAUM owned and operated Kiferbaum Construction Company, a construction company located in Deerfield,

Illinois. In addition, KIFERBAUM was a member of the Board of Trustees of the Chicago Medical School. In that capacity, he owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

h. Defendant P. NICHOLAS HURTGEN was employed as a Senior Managing Director in the Chicago office of Bear Stearns & Co., an investment bank that did business and sought to do business with Edward Hospital, Mercy Hospital, and the State of Illinois.

i. Individual 1 was a medical doctor and businessman, and shared a business suite with LEVINE. In addition, Individual 1 was:

i. A member of the Board of Trustees of the Chicago Medical School. In that capacity, he owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

ii. A trustee of NSO. In that capacity, he owed a fiduciary duty and a duty of honest services to NSO.

j. Individual 2 was the President and Chief Executive Officer of a consulting company located in Chicago, Illinois. In addition, Individual 2 was an attorney.

k. Individual 3 was a businessman based in Europe who at times traveled to the United States, and maintained accounts at various financial institutions in Chicago, Illinois.

Applications for Certificates of Need

l. Pursuant to the Illinois Health Facilities Planning Act (5 ILCS 3960), and the Planning Board Rules, members of the Planning Board were required to base their decision on an application

for a CON on a reasonable and objective application of the pertinent standards set forth in the Planning Act and the Planning Board Rules. Prior to each meeting of the Planning Board, the staff of the Planning Board reviewed each CON application to be presented at that meeting and prepared a written analysis of whether the application was consistent with the standards for the issuance of a CON. The Planning Board could approve, deny, or defer an application, or it could issue an "intent-to-deny", and the application would ordinarily be reconsidered by the Planning Board within a specified time period.

m. Beginning in or about 2003, Mercy Hospital sought a CON to construct hospital in Crystal Lake, Illinois.

i. In connection with a meeting of the Planning Board in or about December 2003, the staff of the Planning Board issued a report stating that the proposed hospital in Crystal Lake did not appear to meet all of the Planning Board's stated criteria for approval. At its December 2003 meeting, the Planning Board issued an intent-to-deny with respect to the hospital.

ii. In connection with a meeting of the Planning Board in or about April 2004, the staff of the Planning Board issued a supplemental report after the receipt of additional information and project modifications from Mercy Hospital regarding the proposed Crystal Lake hospital. The staff report stated that the proposed hospital still did not appear to meet all of the Planning Board's stated criteria for approval. At its April 2004 meeting, the

Planning Board approved the issuance of a CON for the Crystal Lake Hospital.

n. Beginning in or about 2003, Edward Hospital sought CONs to construct a hospital and a medical office building in Plainfield, Illinois.

i. In connection with a meeting of the Planning Board in or about December 2003, the staff of the Planning Board issued a report stating that the proposed medical office building in Plainfield did not appear to meet all of the Planning Board's criteria for approval. At its December 2003 meeting, the Planning Board issued an intent-to-deny with respect to the CON sought for the medical office building.

ii. In connection with a meeting of the Planning Board in or about April 2004, the staff of the Planning Board issued a report stating that the proposed hospital in Plainfield did not appear to meet all of the Planning Board's criteria for approval. At its April 2004 meeting, the Planning Board issued an intent-to-deny with respect to the CON sought for the hospital.

Illinois Laws Regarding Conduct of Public Officials and Bribery

o. Pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/5-50), which became effective on December 9, 2003, Planning Board members were prohibited from having any material communications with a representative of a party concerning a pending matter, without reporting that contact to the Board in writing. The

Board's Ethical Guidelines, which were circulated in August 2003, also prohibited such communications.

p. The Board's Ethical Guidelines provided, *inter alia*:

A Member should not accept, or offer to accept, either directly or indirectly, any economic opportunity or thing of value, if a substantial possibility exists that the opportunity or thing of value is made available to the Member for the purpose of influencing an official action.

A Member should not solicit, accept or agree to accept, directly or indirectly, anything of value from from any person having an interest in any matter which is pending before the Board, under circumstances from which it might reasonably be inferred that the donor's purpose is to influence an official action....

A Member should not communicate with any party in support of, or opposed to, a matter pending before the Board or with the representative of any such party concerning such matter, except as a matter of official record[.]

q. Counsel for the Planning Board advised Board members in writing that Board members should not participate in Board activities if the independent exercise of the Board member's judgment was threatened, or participation would jeopardize public confidence in the integrity of the decisions of the Board.

r. Pursuant to the criminal laws of the State of Illinois, relating to bribery (720 ILCS 5/33-1(d)), LEVINE, as a member of the Planning Board, was prohibited from agreeing to accept any property or personal advantage which he was not authorized by law to accept knowing that such property or personal advantage was promised or tendered with intent to cause him to influence the performance of any act related to the employment or function of any public officer.

s. Pursuant to the criminal laws of the State of Illinois, relating to bribery (720 ILCS 5/33-1(e)), defendants HURTGEN and KIFERBAUM were each prohibited from soliciting or agreeing to accept any property or personal advantage pursuant to an understanding that he would improperly influence or attempt to influence the performance of any act related to the employment or function of any public officer.

t. Pursuant to the criminal laws of the State of Illinois, relating to official misconduct (720 ILCS 5/33-3(c)), LEVINE, as a member of the Planning Board, was prohibited from committing the following acts in his official capacity: (1) performing any act in excess of his lawful authority, with intent to obtain a personal advantage for himself or others; and (2) soliciting or knowingly accepting, for the performance of any act, a fee or reward which he knew was not authorized by law.

The Scheme To Defraud

2. Beginning no later than in or about early 2001 and continuing through at least in or about June 2004, in the Northern District of Illinois, Eastern Division, and elsewhere:

STUART LEVINE,
JACOB KIFERBAUM, and
P. NICHOLAS HURTGEN,

defendants herein, and others known and unknown to the Grand Jury, devised and intended to devise, and participated in, a scheme and artifice to defraud CMS, NSO, the Planning Board, the State of Illinois, and the people of Illinois, of money, property, and the

intangible right to the honest services of defendants LEVINE and KIFERBAUM, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof used the United States mails and other interstate carriers, and interstate and foreign wires, which scheme is further described below.

Overview of the Scheme

3. It was part of the scheme that defendant LEVINE, with the assistance of defendants KIFERBAUM and HURTGEN, fraudulently obtained and sought to obtain millions of dollars for the benefit of LEVINE, and his nominees and associates, and multi-million dollar contracts for the benefit of businesses involving KIFERBAUM and HURTGEN, which conduct involved a series of kickbacks related to construction contracts, as well as the diversion of assets from CMS and NSO. In carrying out this scheme, LEVINE misused the positions of trust that he held with, variously, CMS, NSO, the Planning Board, the State of Illinois, and the people of Illinois, and defrauded those victims of their rights to his honest services. Among the defendants' fraudulent transactions in the course of the scheme were the following:

a. **CMS Addition:** In connection with a contract for the construction of an addition to CMS by Kiferbaum Construction Company, LEVINE and KIFERBAUM agreed that KIFERBAUM would include an extra \$1,000,000 for LEVINE in the cost of the project. KIFERBAUM then paid approximately \$700,000, at LEVINE's direction, to a business

operated by Individual 2. LEVINE and KIFERBAUM subsequently agreed that the remaining portion of those funds would be paid to a company operated by Individual 1. LEVINE and KIFERBAUM did not disclose to CMS the nature or purpose of those additional costs to CMS, nor did they disclose that LEVINE was directing the disposition of CMS funds, or that Individuals 1 and 2 had agreed to receive them. LEVINE, KIFERBAUM, and Individuals 1 and 2, used sham marketing and consulting contracts to conceal the fraudulent nature of the diversion, and the planned diversion, of CMS funds to Individuals 1 and 2.

b. **CMS Student Housing:** In connection with a contract for the construction of a student dormitory for CMS by Kiferbaum Construction Company, LEVINE and KIFERBAUM agreed that KIFERBAUM would include an extra \$1,000,000 for LEVINE in the cost of the project. KIFERBAUM then paid those funds, at LEVINE's direction, to Individual 3. LEVINE and KIFERBAUM did not disclose to CMS the nature or purpose of those additional costs to CMS, nor did they disclose that LEVINE was directing the disposition of CMS funds. LEVINE and KIFERBAUM concealed the fraudulent nature of the diversion of CMS funds to Individual 3 through the use of a sham marketing contract.

c. **Diversion of Assets From NSO and CMS:** LEVINE caused NSO to lend \$3 million to a company controlled by LEVINE, and \$3 million to a company controlled by Individual 1. Notes were executed on behalf of the companies requiring repayment to NSO with

substantial interest. LEVINE and Individual 1 were later substituted as the borrowers. LEVINE then arranged for NSO to "donate" the promissory notes to CMS in a sealed envelope not to be opened by CMS, with the condition that the promissory notes would be immediately sold to Individual 3 for \$1 million - which was the amount of the kickback proceeds that LEVINE and KIFERBAUM fraudulently obtained from CMS in connection with the construction of the student dormitory and diverted to Individual 3. Individual 3 paid \$1 million to CMS for the promissory notes and then transferred them to LEVINE and Individual 1 as "gifts," thereby extinguishing their debts to NSO. By means of this transaction LEVINE fraudulently obtained \$3 million from NSO for himself, and \$3 million for Individual 1, through the use of the \$1 million that was fraudulently obtained from CMS by LEVINE and KIFERBAUM.

d. **Mercy Hospital:** LEVINE solicited a kickback of approximately \$1.5 million from KIFERBAUM relating to the construction of Mercy Hospital's Crystal Lake facility. KIFERBAUM agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. LEVINE used his influence with the Planning Board to ensure that Mercy Hospital received approval of its application for the Crystal Lake hospital after hiring Kiferbaum Construction Company, and LEVINE did not disclose to the Planning Board his financial arrangement or contacts with KIFERBAUM. LEVINE directed that KIFERBAUM pay the kickback proceeds relating to the Mercy Hospital project to Individual 1. LEVINE,

KIFERBAUM, and Individual 1 agreed to use a sham consulting contract to conceal the fraudulent nature of the intended payments from KIFERBAUM to Individual 1.

e. **Edward Hospital:** LEVINE, KIFERBAUM, and HURTGEN agreed that they would use LEVINE's position as a member of the Planning Board to attempt to force Edward Hospital to hire Kiferbaum Construction Company to build Edward Hospital's Plainfield facility, by threatening representatives of Edward Hospital that the Planning Board would not approve the application for the Plainfield facility unless Edward Hospital hired KIFERBAUM to build the hospital and medical office building. HURTGEN wanted his employer, Bear Stearns, to receive the financing work from the Edward Hospital project.

CHICAGO MEDICAL SCHOOL

The CMS Addition

4. It was further part of the scheme that in or about the summer of 2001, LEVINE directed KIFERBAUM to include an extra \$1,000,000 for LEVINE in the costs set forth in the proposed construction contract to build an addition to the School. KIFERBAUM agreed to pay a kickback of \$1,000,000 to LEVINE, and, did in fact pay approximately \$700,000 of that kickback, as directed by LEVINE. In furtherance of this aspect of the scheme:

a. LEVINE and KIFERBAUM caused CMS to award the construction contract - of approximately \$18 million - to Kiferbaum Construction Company, and to pay an extra \$1,000,000 in connection with the construction of an addition to the School. In connection

with the consideration of the construction contract by the CMS Board of Trustees, LEVINE and KIFERBAUM concealed from the Board of Trustees that they had agreed to the payment of this kickback using CMS funds, and that LEVINE - who participated in the CMS Board of Trustees' consideration of the contract - had a substantial personal financial interest in its approval.

b. In order to conceal the fraudulent nature of the extra \$1 million to be paid by CMS to Kiferbaum Construction Company, LEVINE directed KIFERBAUM to pay this extra \$1 million to Individual 2's consulting company, and KIFERBAUM agreed to do so.

c. In order to conceal the fraudulent nature of the payments to Individual 2, LEVINE caused a sham marketing contract to be prepared, which was signed by KIFERBAUM and Individual 2 in or about early December 2001. This contract provided that Kiferbaum Construction Company would pay Individual 2's company \$28,000 a month for approximately three years, for a total of approximately \$1 million.

d. Beginning in or about December 2001 and continuing through in or about June 2004, Individual 2 sent invoices requesting payment of \$28,000 every month, despite the fact that Individual 2 and his company did not provide any substantial services in exchange for those payments. KIFERBAUM caused his company to pay Individual 2's company a total of approximately \$700,000.

e. In or about December 2003 or January 2004, LEVINE and KIFERBAUM agreed that the balance that KIFERBAUM still owed on the

kickback relating to the CMS addition would be combined with kickback payments that KIFERBAUM would make relating to Mercy Hospital. Based on that agreement, KIFERBAUM stopped paying Individual 2's company in approximately January 2004.

f. In or about May 2004, LEVINE and Individual 1 caused a sham consulting contract to be drafted and sent to KIFERBAUM, providing that Kiferbaum Construction Company would pay approximately \$1,728,000 million to Individual 1's company. LEVINE arranged for that contract to include approximately \$1.5 million as a kickback relating to Mercy Hospital, as described below, and approximately \$228,000 to complete the kickback payments relating to the construction of the CMS addition.

g. Notwithstanding their positions as members of the CMS Board of Trustees, LEVINE and KIFERBAUM intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS addition, including their agreements and actions concerning the \$1 million kickback described above.

CMS Student Housing

5. It was further part of the scheme that in or about the summer of 2002, LEVINE directed KIFERBAUM to include an extra \$1,000,000 for LEVINE in the costs set forth in the proposed construction contract relating to the construction of student housing. KIFERBAUM agreed to pay a kickback of \$1,000,000 to LEVINE,

and did in fact pay \$1,000,000 million as a kickback, as directed by LEVINE. In furtherance of this aspect of the scheme:

a. LEVINE and KIFERBAUM caused CMS to award the construction contract - of approximately \$22 million - to Kiferbaum Construction Company, and to pay an extra \$1,000,000 in connection with the construction of the student housing.

b. In order to conceal the fraudulent nature of the extra \$1 million to be paid by CMS to Kiferbaum Construction Company, in or about December 2002, LEVINE directed KIFERBAUM to pay this extra \$1 million to Individual 3, which KIFERBAUM agreed to do.

c. On or about December 12, 2002, KIFERBAUM caused his company to issue a check in the amount of \$628,000, made payable to Individual 3.

d. On or about March 13, 2003, KIFERBAUM caused his company to issue a check in the amount of \$372,000, made payable to Individual 3.

e. In order to conceal the fraudulent nature of the payments made to Individual 3, in or about March 2003, LEVINE caused a sham marketing contract to be prepared and sent to KIFERBAUM. Although the contract stated that Individual 3 would provide services to Kiferbaum Construction Company, no such services were ever provided.

f. LEVINE and Individual 1 each received a substantial financial benefit as a result of the \$1 million kickback, as described below, in that, the \$1 million kickback was used in a

manner that enabled LEVINE to fraudulently divert \$6 million from NSO and CMS.

g. Notwithstanding their positions as members of the CMS Board of Trustees, LEVINE and KIFERBAUM intentionally concealed from and failed to disclose to CMS material facts relating to the financial arrangements for the construction of the CMS student housing, including their agreements and actions concerning the \$1,000,000 kickback described above.

NORTHSHORE SUPPORTING ORGANIZATION

6. It was further part of the scheme that LEVINE fraudulently diverted a total of \$6,000,000 from NSO, by causing NSO to lend \$3,000,000 to a company controlled by LEVINE, and \$3,000,000 to a company controlled by Individual 1, and by subsequently arranging to have both of those loans forgiven without repayment, as set forth below.

a. On or about July 19, 2002, LEVINE fraudulently caused NSO to lend \$3,000,000 to LEVINE's company, S.L. Investment Enterprises, L.P., and \$3,000,000 to a company controlled by Individual 1. In connection with those loans, notes were executed on behalf of the companies requiring each company to repay the \$3,000,000 loan to NSO at the end of 20 years, with an interest rate of 7.5% per annum, resulting in each company owing approximately \$12.5 million in 20 years.

b. On or about December 1, 2002, LEVINE and Individual 1 each signed a promissory note agreeing to substitute as the borrower of the funds borrowed from NSO by their respective companies.

c. LEVINE used his position as a member of the NSO Board of Trustees to cause NSO to donate those two promissory notes to CMS, but arranged that the notes would be donated to CMS only on the condition that CMS immediately sold the promissory notes to Individual 3 for \$1,000,000 - which was the amount of the kickback proceeds that LEVINE and KIFERBAUM had fraudulently obtained from CMS in connection with the construction of the student dormitory and diverted to Individual 3.

d. LEVINE agreed to act as an escrow holder for the notes, based on an escrow agreement that required that the notes be maintained in a sealed envelope, thereby concealing from CMS the amounts of the notes and the fact that LEVINE and Individual 1 were the obligors on the notes. On or about January 9, 2003, LEVINE arranged to have the Chairman of the Board of Trustees sign a document accepting the promissory notes as a donation, and another document agreeing to sell the promissory notes to Individual 3 for \$1,000,000.

e. On or about January 31, 2003, LEVINE and Individual 3 caused a check for \$1 million, drawn on an account belonging to Individual 3, to be sent to LEVINE.

f. On or about February 3, 2003, LEVINE presented the check for \$1 million to the President/CEO of CMS. In order to conceal

the fraudulent nature of this transaction, LEVINE falsely represented to the President/CEO that the \$1 million was a personal donation from LEVINE and Individual 1. LEVINE failed to disclose to the President/CEO any information concerning the \$6 million promissory notes, including the fact that LEVINE had previously arranged with the Chairman of the Board of Trustees that the \$1 million from Individual 3 would constitute Individual 3's payment for the purchase of the NSO promissory notes.

g. After purchasing the promissory notes for \$1 million, Individual 3 transferred the promissory notes to LEVINE and Individual 1, respectively, as "gifts," thereby freeing LEVINE and Individual 1 from any obligation to repay the \$6,000,000 that they had purported to borrow from NSO.

h. By means of this sequence of transactions, LEVINE fraudulently obtained and converted \$3,000,000 to his personal use, and \$3,000,000 to the use of his associate, Individual 1.

i. Notwithstanding his position as a member of the CMS Board of Trustees, LEVINE intentionally concealed from and failed to disclose to CMS material facts relating to the series of transactions involving NSO and Individual 3, including LEVINE's role in these transactions, the personal financial interests of LEVINE and Individual 1 in these transactions, KIFERBAUM's payments to Individual 3, and that the promissory notes sold by CMS for \$1 million had a total face value substantially in excess of that amount.

j. On or about December 22, 2003, in order to conceal the fraudulent nature of this transaction, LEVINE caused a tax return to be filed with the IRS on behalf of NSO, in which LEVINE claimed that NSO donated notes receivable with a value of \$6 million to CMS's Scholarship Fund, and intentionally failed to disclose to the IRS certain material facts concerning this transaction, including the fact that the donation of the promissory notes was conditioned on the School's agreement to sell the promissory notes for \$1 million, as part of a series of transactions that resulted in the transfer of the \$6 million to two NSO trustees, namely, LEVINE and Individual 1.

HEALTH FACILITIES PLANNING BOARD

Mercy Hospital

7. It was further part of the scheme that LEVINE solicited a kickback of approximately \$1.5 million from KIFERBAUM relating to the construction of Mercy Hospital's Crystal Lake facility. KIFERBAUM agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. At LEVINE's direction, the kickback proceeds were to be paid to Individual 1 pursuant to a sham consulting contract. LEVINE agreed to and did use his influence with the Planning Board to ensure that Mercy Hospital would and did receive approval of its application to build the Crystal Lake facility after it contracted with Kiferbaum Construction Company to build that facility. In voting for, and influencing other Planning Board members to vote for, the application for Mercy Hospital's Crystal Lake facility, LEVINE concealed from the Planning Board his

personal financial interest in the construction of the Crystal Lake facility. In furtherance of this aspect of the scheme:

a. In or about late 2003, LEVINE and KIFERBAUM agreed that LEVINE would use his position as a Planning Board member to attempt to influence the Planning Board to approve Mercy's application, if Mercy gave Kiferbaum Construction Company the construction contract - of approximately \$49 million - to build Mercy's proposed hospital. In exchange, LEVINE asked KIFERBAUM for a kickback of approximately \$1.5 million, to be paid at LEVINE's direction. KIFERBAUM agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date.

b. On or about January 23, 2004, approximately one month after the Planning Board had made known its intent to deny Mercy Hospital's application to build the Crystal Lake facility, KIFERBAUM and Mercy Hospital signed a construction contract, agreeing that Kiferbaum Construction Company would build the new hospital for Mercy.

c. On or about April 21, 2004, the Planning Board voted in favor of granting Mercy's application for a permit to build a new hospital; LEVINE voted to approve the application. LEVINE also took steps to cause other Planning Board members to vote to approve Mercy's application.

d. On or about April 21, 2004, LEVINE reported to Individual 1 what had happened at the Planning Board meeting. LEVINE said that Mercy's application was approved, and no one could have

done it, except him. He said that during the voting he had to negotiate with one of the Board members, and the Board member agreed to vote yes. LEVINE said that hiring KIFERBAUM did it for Mercy.

e. On or about April 21, 2004, LEVINE told KIFERBAUM what happened at the Planning Board meeting. LEVINE said that nobody could have gotten this done but LEVINE; there was a mutiny with the Board members who did not want to approve Mercy's application; and nobody really knew that LEVINE was orchestrating it. KIFERBAUM said that he could not thank LEVINE enough. LEVINE said that they were in this together.

f. Shortly after Mercy's application was approved, LEVINE directed KIFERBAUM to make the kickback payments relating to Mercy Hospital to Individual 1. LEVINE told KIFERBAUM he would have a consulting agreement prepared for Kiferbaum Construction Company and Individual 1's company.

g. On or about April 29, 2004, Individual 1 sent a sham consulting agreement to KIFERBAUM, which provided that Kiferbaum Construction Company would make payments to a company operated by Individual 1, totaling approximately \$1,728,000. This amount included approximately \$1.5 million in payments relating to Mercy, and approximately \$228,000 in payments that KIFERBAUM still owed as part of the kickback relating to the CMS addition.

h. On or about May 1, 2004, LEVINE told Individual 1 that LEVINE had met with KIFERBAUM and gone over the Mercy deal with him. LEVINE said that there were other people who knew that Mercy got its

CON because of the combination of KIFERBAUM and HURTGEN, and a law firm, and that this information would spread like wildfire. Individual 1 said that he had sent KIFERBAUM a draft of the contract, and said that he had told KIFERBAUM that Individual 1 wanted it to be \$72,000 a month for 24 months, and that KIFERBAUM had said that was no problem.

i. Notwithstanding his position as a member of the Planning Board, LEVINE intentionally concealed from and failed to disclose to the Planning Board material facts relating to its consideration of Mercy Hospital's application to build the Crystal Lake hospital, including LEVINE's and KIFERBAUM's arrangement for KIFERBAUM to pay a kickback at LEVINE's direction.

Edward Hospital

8. It was further part of the scheme that LEVINE, KIFERBAUM, and HURTGEN agreed that they would use LEVINE's position as a member of the Planning Board to attempt to force Edward Hospital to hire Kiferbaum Construction Company to build Edward Hospital's Plainfield hospital and medical office building, by threatening representatives of Edward Hospital that the Planning Board would not approve those facilities unless Kiferbaum Construction Company was given the construction contracts to build them. The construction contracts were projected as being approximately \$90 million for the hospital, and approximately \$23 million for the medical office building. HURTGEN assisted in the scheme because he wanted his employer, Bear

Stearns, to receive the financing work for the new hospital. In furtherance of this aspect of the scheme:

a. In or about December 2003, LEVINE, KIFERBAUM, and HURTGEN agreed that LEVINE would try to help Edward Hospital get approval for its applications, if Edward Hospital gave the construction contracts for the projects to Kiferbaum Construction Company. HURTGEN agreed that he would introduce KIFERBAUM to the CEO of Edward Hospital. KIFERBAUM understood, as a result of his recent prior dealings with LEVINE, in the course of which KIFERBAUM had already paid more than \$1.6 million in kickbacks and had agreed to pay more, that LEVINE would direct him to pay a kickback in connection with the Edward Hospital projects.

b. In or about mid-December 2003 HURTGEN called the CEO of Edward Hospital, and said that Edward Hospital should give a construction contract to Kiferbaum Construction Company, if Edward Hospital wanted to get its CONS approved. HURTGEN knew that on December 17, 2003, the Planning Board was scheduled to review Edward Hospital's application to build a new medical office building, and HURTGEN said that the CEO should postpone having that application reviewed, so Edward Hospital would have time to hire Kiferbaum Construction Company. HURTGEN warned that if Edward Hospital went forward at the December Planning Board meeting, the application would be denied.

c. On or about December 17, 2003, Edward Hospital went forward with the application to build a medical office building, and

LEVINE voted against approval of that application. The Planning Board issued an intent-to-deny with respect to the medical office building.

d. LEVINE, KIFERBAUM, and HURTGEN knew that LEVINE could not communicate with representatives from Edward Hospital about their pending applications because such *ex parte* communications were prohibited. Therefore, KIFERBAUM and HURTGEN communicated with Edward Hospital representatives, in place of and on behalf of LEVINE, in order to communicate LEVINE's threats and promises to Edward Hospital.

e. Shortly after the Planning Board meeting, HURTGEN arranged to introduce KIFERBAUM to the Edward Hospital CEO. On or about December 23, 2003, HURTGEN and KIFERBAUM met with the Edward Hospital CEO to attempt to persuade the CEO to hire Kiferbaum Construction Company to build the pending projects. Unbeknownst to the defendants, the Edward Hospital CEO was cooperating with the Federal Bureau of Investigation (FBI). During the meeting, among other things:

(i) HURTGEN assured the CEO that hiring KIFERBAUM would take care of all of Edward Hospital's issues, advised her that LEVINE was one of the inside guys, and warned the CEO that if Edward Hospital did not hire Kiferbaum Construction Company, the hospital would be given a hard time. HURTGEN also reminded the CEO that HURTGEN had correctly warned her that the Planning Board would deny Edward Hospital's application if Edward Hospital proceeded without

hiring KIFERBAUM, and that LEVINE had wanted Edward Hospital to defer the Planning Board's vote on its application for the medical office building.

(ii) KIFERBAUM told the CEO that he had been working with Mercy Hospital on its new project, and that Mercy's application to build a new hospital in Crystal Lake was going to be approved.

f. On or about January 8, 2004, HURTGEN met with Edward Hospital's CEO, and the Project Administrator. Unbeknownst to the defendants, in addition to the CEO, the Project Administrator was also cooperating with the FBI. During the meeting, among other things:

(i) HURTGEN stated that LEVINE indirectly controlled other votes on the Board, and that LEVINE had said that Edward Hospital's projects would not be approved by the Board unless Edward Hospital hired Kiferbaum Construction Company. HURTGEN also said that other people with whom he had connections had sent him to see the CEO, and that he had told them he did not want to meet with the CEO unless he could tell her that the Edward Hospital projects would not happen unless the CEO did what HURTGEN was recommending.

(ii) In order to explain his involvement in efforts to persuade Edward Hospital to hire Kiferbaum Construction Company, HURTGEN stated that Bear Stearns would finance Edward Hospital's projects if the projects were approved.

(iii) In response to the CEO's request for proof that the threats and promises were real, HURTGEN attempted to assure the

CEO that LEVINE was using HURTGEN to talk to the CEO, and that LEVINE wanted HURTGEN to take care of this with the CEO. HURTGEN said that he might be able to arrange a situation in which LEVINE would inadvertently bump into the CEO and HURTGEN.

g. On or about January 15, 2004, KIFERBAUM met with Edward Hospital's CEO, and the Project Administrator, at Edward Hospital. KIFERBAUM confirmed that if Edward Hospital hired KIFERBAUM, they would get approval from the Planning Board, but if they did not hire him, Edward Hospital would not get approval.

h. On or about February 2, 2004, HURTGEN told Edward Hospital's CEO that it was his view that Edward Hospital's projects would not get approved unless Edward Hospital hired KIFERBAUM. HURTGEN said that the CEO should start working this out with KIFERBAUM, and warned that he did not think that there was any way around it.

i. On or about February 10, 2004, KIFERBAUM met with the Edward Hospital CEO, and the Project Administrator, at Edward Hospital. KIFERBAUM said that he was confident that Edward Hospital's project would be approved if they signed a contract with him.

j. On or about April 13, 2004, HURTGEN told Edward Hospital's CEO that he understood that the CEO wanted some demonstration from LEVINE or HURTGEN which would allow the CEO to see that they knew each other and were talking to each other. HURTGEN

said he would talk to LEVINE about that and would call the CEO back about arranging something that weekend.

k. On or about April 14, 2004, HURTGEN told Edward Hospital's CEO that he had a long talk with LEVINE that morning, and LEVINE did not have a problem with running into the CEO and saying hello. HURTGEN said that LEVINE wanted to make sure that everything was on track, and that LEVINE thought that Edward Hospital's medical office building should be approved at the next meeting.

l. On or about April 16, 2004, KIFERBAUM talked with the Edward Hospital CEO about setting up a meeting that would demonstrate that KIFERBAUM and LEVINE knew each other. Later that same day, HURTGEN and KIFERBAUM both left voicemail messages for the CEO, confirming that there would be a meeting that Sunday.

m. On or about Friday, April 17, 2004, LEVINE told KIFERBAUM that he would speak to KIFERBAUM and the CEO at the restaurant on Sunday, and he would have HURTGEN or someone else with him.

n. On or about Sunday, April 18, 2004, LEVINE and KIFERBAUM talked about the meeting that they were going to have that morning at a restaurant. LEVINE said he would talk to KIFERBAUM and the CEO at the restaurant. LEVINE instructed KIFERBAUM to tell the CEO that because of the ethics law concerning *ex parte* communications relating to pending projects, the CEO should not ask anything direct about her particular project. LEVINE said that the CEO knew why she was there with KIFERBAUM, and she was either going to do it or she

was not going to do it. LEVINE said he would bump into KIFERBAUM by mistake a little later that day.

o. On or about Sunday, April 18, 2004, LEVINE and HURTGEN went to a restaurant in Deerfield, Illinois, as planned, in order to prove to the CEO that LEVINE, HURTGEN, and KIFERBAUM were working together, and that their threats and promises were real. LEVINE and HURTGEN walked over to the table where KIFERBAUM and the CEO were sitting. LEVINE said that he was the Chairman of the Board of CMS, and that KIFERBAUM had done a project for them. LEVINE said that KIFERBAUM is a person upon whom one can rely, and he is a person whose word can be depended on.

p. Shortly after that meeting, KIFERBAUM thanked LEVINE for what he had done at the restaurant. KIFERBAUM said that it went perfectly and the CEO understood. KIFERBAUM said that he told the CEO that they had to come to some sort of agreement. LEVINE said that they would find out what she's made of. LEVINE said that he had never been in a better position, and there had never been such a tight control of the central apparatus. LEVINE said that if the CEO promised to sign a contract, KIFERBAUM should say that he accepted her word, and that he would do whatever he could.

q. On or about April 21, 2004, the Planning Board held a Board meeting at which Edward Hospital's application for a permit to build the Plainfield hospital was considered. Edward Hospital had not hired KIFERBAUM, and LEVINE voted against Edward Hospital's

application to build a new hospital, and the Planning Board issued a notice of its intent to deny the application.

r. On or about April 21, 2004, shortly after the Board meeting, LEVINE and KIFERBAUM talked about the fact that Mercy's project got approved and Edward Hospital's project got denied. LEVINE said that they were in this together. LEVINE said that Edward Hospital would come back and try again with the application for the new hospital, but that Edward Hospital would not get approved.

s. On or about May 13, 2004, the Project Administrator for Edward Hospital called HURTGEN, because there was another Planning Board meeting scheduled for June. The Project Administrator said that Edward Hospital was reassessing the situation, and they realized that they probably needed to change course. HURTGEN said that if they were willing to listen, and to think about some things, he would find out what, if anything, needed to be done.

t. Notwithstanding his position as a member of the Planning Board, LEVINE intentionally concealed from and failed to disclose to the Planning Board material facts relating to its consideration of Edward Hospital's applications for permits to build the Plainfield hospital and medical office building, including LEVINE's arrangement with KIFERBAUM and HURTGEN to pressure Edward Hospital to hire Kiferbaum Construction Company so that KIFERBAUM would pay a kickback at LEVINE's direction and Bear Stearns would receive the financing work when the projects went ahead, as well as LEVINE's *ex parte* contacts, both directly and through HURTGEN and

KIFERBAUM, with Edward Hospital officials regarding Edward Hospital's pending CON applications.

Concealment

9. It was further part of the scheme that LEVINE, KIFERBAUM, and HURTGEN did misrepresent, conceal and hide, and cause to be misrepresented, concealed, and hidden, acts done in furtherance of the scheme and the purposes of those acts.

Mailings and Transmissions by Wire and Radio

10. It was further part of the scheme that LEVINE, KIFERBAUM, and HURTGEN executed and attempted to execute the scheme described above by causing correspondence, communications, contracts, invoices, other documents, funds, and other items, to be transmitted in interstate or foreign commerce by signals, over wire or radio, through the U.S. mails, or by private or commercial interstate carriers.

Mail Fraud - Planning Board (Edward Hospital)

11. On or about January 26, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,
JACOB KIFERBAUM, and
NICHOLAS HURTGEN,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a proposed contract from Kiferbaum Construction

Company, to Edward Hospital, relating to the construction of a new hospital and a medical office building, which envelope was addressed to the CEO of Edward Hospital, at the hospital's address in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT TWO

Wire Fraud - Planning Board (Edward Hospital)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about January 17, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,
JACOB KIFERBAUM, and
NICHOLAS HURTGEN,

defendants herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted by means of wire and radio communication in interstate commerce signals and sounds, namely a phone call between defendant HURTGEN, in Florida, and the Edward Hospital Project Administrator, in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346, and 2.

COUNT THREE

Mail Fraud - Planning Board (Edward Hospital)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about January 31, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,
JACOB KIFERBAUM, and
NICHOLAS HURTGEN,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be delivered by mail according to the directions thereon, an envelope containing a letter from the Planning Board, namely, a Notice of the Planning Board's intent to deny Edward Hospital's application to build a medical office building, which envelope was addressed to a representative of Edward Hospital, at the hospital's address in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT FOUR

Wire Fraud - Planning Board (Edward Hospital)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about April 13, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,
JACOB KIFERBAUM, and
NICHOLAS HURTGEN,

defendants herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted by means of wire and radio communication in interstate commerce signals and sounds, namely, a phone call between defendant HURTGEN in Colorado and the CEO of Edward Hospital in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346, and 2.

COUNT FIVE

Wire Fraud - Planning Board (Edward Hospital)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about April 14, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,
JACOB KIFERBAUM, and
NICHOLAS HURTGEN,

defendants herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted by means of wire and radio communication in interstate commerce signals and sounds, namely a phone call between defendant HURTGEN in Colorado, and the CEO of Edward Hospital in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346, and 2.

COUNT SIX

Mail Fraud - Planning Board (Edward Hospital)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about May 6, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,
JACOB KIFERBAUM, and
NICHOLAS HURTGEN,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be delivered by mail according to the directions thereon, an envelope containing a letter from the Planning Board, namely a Notice of the Planning Board's intent to deny Edward Hospital's application to build a hospital, which envelope was addressed to a representative of Edward Hospital, at the hospital's address in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT SEVEN

Mail Fraud - Planning Board (Mercy Hospital)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about November 25, 2003, at Deerfield, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a letter from defendant KIFERBAUM to Mercy Hospital, soliciting the construction contract for the proposed hospital and offering to help Mercy get approval from the Planning Board, which envelope was addressed to Mercy Hospital, in Woodstock, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT EIGHT

Wire Fraud - Planning Board (Mercy Hospital)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about May 1, 2004, at Highland Park, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,

defendant herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted by means of wire and radio communication in interstate commerce signals and sounds, namely a phone call to Individual 1 in Delray Beach, Florida, from defendant LEVINE in Highland Park, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346, and 2.

COUNT NINE

Mail Fraud - Planning Board (Mercy Hospital)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about May 24, 2004, at Woodstock, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be delivered by mail according to the directions thereon, an envelope containing a letter from the Planning Board confirming that a permit was being issued authorizing Mercy Crystal Lake Hospital and Medical Center, Inc. to build a new hospital, which envelope was addressed to a representative of Mercy Hospital, at the hospital's address, in Woodstock, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT TEN

Mail Fraud - Chicago Medical School (Addition)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about December 12, 2001, at Deerfield, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a check in the amount of approximately \$28,000, from Kiferbaum Construction Company, payable to Individual 2's consulting company, which envelope was addressed to the company's address in Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT ELEVEN

Mail Fraud - Chicago Medical School (Addition)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about December 13, 2002, at Deerfield, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a check in the amount of approximately \$28,000, from Kiferbaum Construction Company, payable to Individual 2's consulting company, which envelope was addressed to the company's address in Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT TWELVE

Mail Fraud - Chicago Medical School (Addition)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about January 10, 2002, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a letter from Kiferbaum Construction Company, to the Chicago Medical School, requesting payment in connection with construction of the addition to the School, which envelope was addressed to the Chicago Medical School in North Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT THIRTEEN

Mail Fraud - Chicago Medical School (Addition)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about May 8, 2002, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a letter from Kiferbaum Construction Company, to the Chicago Medical School, requesting payment in connection with construction of the addition to the School, which envelope was addressed to the Chicago Medical School in North Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT FOURTEEN

Mail Fraud - Chicago Medical School (Addition)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about September 10, 2002, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a letter from Kiferbaum Construction Company, to the Chicago Medical School, requesting payment in connection with construction of the addition to the School, which envelope was addressed to the Chicago Medical School in North Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT FIFTEEN

Mail Fraud - Chicago Medical School (Addition)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about November 7, 2002, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a letter from Kiferbaum Construction Company, to the Chicago Medical School, requesting payment in connection with construction of the addition to the School, which envelope was addressed to the Chicago Medical School in North Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT SIXTEEN

Mail Fraud - Chicago Medical School (Addition)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about December 5, 2003, at Deerfield, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a check in the amount of approximately \$28,000, from Kiferbaum Construction Company, payable to Individual 2's consulting company, which envelope was addressed to the company's address in Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT SEVENTEEN

Mail Fraud - Chicago Medical School (Addition)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about January 9, 2004, at Deerfield, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a check in the amount of approximately \$28,000, from Kiferbaum Construction Company, payable to Individual 2's consulting company, which envelope was addressed to the company's address in Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT EIGHTEEN

Mail Fraud - Chicago Medical School (Student Housing)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about January 10, 2003, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a letter from Kiferbaum Construction Company, to the Chicago Medical School requesting payment in connection with the CMS student housing construction, which envelope was addressed to the Chicago Medical School in North Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT NINETEEN

Mail Fraud - Chicago Medical School (Student Housing)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about January 27, 2003, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a letter from Kiferbaum Construction Company, to the Chicago Medical School requesting payment in connection with the CMS student housing construction, which envelope was addressed to the Chicago Medical School in North Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT TWENTY

Mail Fraud - Chicago Medical School (Student Housing)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about March 4, 2003, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a letter from Kiferbaum Construction Company, to the Chicago Medical School requesting payment in connection with the CMS student housing construction, which envelope was addressed to the Chicago Medical School in North Chicago, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT TWENTY-ONE

Mail Fraud - Northshore Supporting Organization

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about January 31, 2003, at Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,

defendant herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, knowingly caused an envelope to be sent by FedEx, a commercial interstate carrier, from Goldman, Sachs, & Co., in Chicago, Illinois, according to the directions thereon, which envelope contained a check in the amount of approximately \$1,000,000, from Individual 3's account, made payable to Finch University of Health Sciences/Chicago Medical School, which envelope was addressed to defendant LEVINE in Delray Beach, Florida;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT TWENTY-TWO

Mail Fraud - Northshore Supporting Organization

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about February 7, 2003, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,

defendant herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, did knowingly cause to be placed in an authorized depository for mail matter, to be sent and delivered by the United States Postal Service, according to the directions thereon, an envelope containing a letter from the President/CEO of the Chicago Medical School thanking defendant LEVINE and Individual 1 for their gift of \$1,000,000, and agreeing to recognize the gift anonymously, which envelope was addressed to defendant LEVINE and Individual 1 at their office in Deerfield, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT TWENTY-THREE

Mail Fraud - Northshore Supporting Organization

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. On or about December 29, 2003, at Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,

defendant herein, for the purpose of executing the above-described scheme, and attempting to execute the above-described scheme, knowingly caused a package to be sent by FedEx, a commercial interstate carrier, from NSO's trust accountant, in Chicago, Illinois, according to the directions thereon, which package contained a tax return, Form 990, for NSO, and a cover letter, which package was addressed to the Internal Revenue Service, in Ogden, Utah;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT TWENTY-FOUR

Extortion - Planning Board (Edward Hospital, Construction Contract)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 10 of Count One of this Indictment as though fully set forth herein.

2. Beginning in or about December 2003 and continuing through in about May 2004, at Deerfield, Highland Park, and Naperville, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,
JACOB KIFERBAUM, and
NICHOLAS HURTGEN,

defendants herein, did attempt to commit extortion, which extortion would obstruct, delay, and affect commerce, in that the defendants attempted to obtain property, in the form of a construction contract from Edwards Hospital, on behalf of and for the benefit of defendant KIFERBAUM, with Edward Hospital's consent induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm;

In violation of Title 18, United States Code, Sections 1951, and
2.

COUNT TWENTY-FIVE

Money Laundering - CMS/NSO (\$1 Million)

The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraph 1 of Count One of this Indictment as though fully set forth herein.

2. On or about February 3, 2003, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,

defendant herein, knowingly conducted, and caused to be conducted, a financial transaction affecting interstate commerce, which financial transaction involved the proceeds of specified unlawful activity, that is:

mail fraud in violation of Title 18, United States Code, Sections 1341 and 1346, relating to the defrauding of the Chicago Medical School, in that defendant LEVINE caused Individual 3 to transfer \$1,000,000 to the Chicago Medical School in the form of a check drawn on Individual 3's Goldman Sachs & Company account number, which was used to purchase two promissory notes, signed by defendant LEVINE and Individual 1, with a total face value of \$6 million,

defendant LEVINE knowing that the transaction was designed in whole and in part to conceal and disguise the nature, source, ownership and control of the proceeds of said specified unlawful activity, and while conducting and causing the conduction of said financial transaction, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity;

In violation of Title 18, United States Code, Sections
1956(a) (1) (B) (i), and 2.

COUNT TWENTY-SIX

Monetary Transaction - CMS/NSO (\$1 Million)

 The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraph 1 of Count One of this Indictment as though fully set forth herein.

2. On or about February 3, 2003, at North Chicago, in the Northern District of Illinois, Eastern Division,

STUART LEVINE,

defendant herein, did knowingly engage and attempt to engage in a monetary transaction affecting interstate commerce and involving criminally derived property of a value greater than \$10,000, in that defendant caused Individual 3 to transfer \$1 million to the Chicago Medical School in the form of a check drawn on Individual 3's Goldman Sachs & Company account, which was used to purchase two promissory notes, signed by defendant LEVINE and Individual 1, with a total face value of \$6 million, which monetary transaction involved the proceeds of specified unlawful activity, namely, acts and activities constituting mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341, 1343, and 1346;

In violation of Title 18, United States Code, Sections 1957, and
2.

COUNT TWENTY-SEVEN

Misapplication of Funds - Chicago Medical School (Individual 2)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraph 1 of Count One of this Indictment as though fully set forth herein.

2. From in or about December 2001, to in or about November 2002, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, each being an agent of Chicago Medical School, an organization which received federal benefits in excess of \$10,000, did embezzle, steal, obtain by fraud, and otherwise without authority knowingly convert and cause to be converted to the use of a person other than the rightful owner, and intentionally misapplied and caused to be misapplied property that was valued at \$5000 or more; namely, CMS construction funds of approximately \$28,000 per month, which were paid to Individual 2's company, by and through defendant KIFERBAUM, and Kiferbaum Construction Company, such funds being owned by and under the care, custody, and control of CMS;

In violation of Title 18, United States Code, Section 666(a) (1) (A), and 2.

COUNT TWENTY-EIGHT

Misapplication of Funds - Chicago Medical School (Individual 3)

_____The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraph 1 of Count One of this Indictment as though fully set forth herein.

2. From in or about December 2002, to in or about April 2003, in the Northern District of Illinois, Eastern Division,

STUART LEVINE, and
JACOB KIFERBAUM,

defendants herein, each being an agent of CMS, an organization which received federal benefits in excess of \$10,000, did embezzle, steal, obtain by fraud, and otherwise without authority knowingly convert and cause to be converted to the use of a person other than the rightful owner, and intentionally misapplied and caused to be misapplied property that was valued at \$5000 or more; namely, construction funds, which were paid to Individual 3, by and through defendant KIFERBAUM, and Kiferbaum Construction Company, totaling \$1,000,000, such funds being owned by and under the care, custody, and control of Chicago Medical School;

In violation of Title 18, United States Code, Section 666(a)(1)(A), and 2.

FORFEITURE ALLEGATION ONE

The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The allegations contained in Counts 10 through 23, 27, and 28 of this Indictment are realleged and incorporated herein by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. As a result of his violations of Title 18, United States Code, Sections 1341, 1343, and 666 as alleged in the foregoing Indictment,

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defendant herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section, 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all right, title and interest in property, real and personal, which constitutes and is derived from proceeds traceable to the charged offenses.

3. The interests of the defendants subject to forfeiture pursuant to Title 18, United States Code, Section, 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) include but are not limited to, approximately \$9,500,000

4. If any of the funds subject to forfeiture and described above, as a result of any act or omission of the defendant:

- (a) Cannot be located upon the exercise of due diligence;
- (b) Have been transferred or sold to, or deposited with, a third party;
- (c) Have been placed beyond the jurisdiction of the Court;

- (d) Have been substantially diminished in value; or
- (e) Have been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property, including but not limited to, the following property, under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c):

- (i) The real property commonly known as: 57 South Deere Park Drive, Highland Park, Illinois, legally described as follows:

PARCEL 1: LOTS 77 AND 78 IN BAIRD AND WARNER, INC. ADDITION TO DEERE PARK SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE SOUTHEAST FRACTIONAL QUARTER OF SECTION 31, TOWNSHIP 43 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH LOTS 13 AND 14 IN HILL AND STONE'S RAVINE VIEW SUBDIVISION IN SAID SOUTHWEST 1/4 OF SECTION 31 IN THE CITY OF HIGHLAND PARK; ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 1926 IN BOOK "Q" OF PLATS, PAGE 86, AS DOCUMENT 290930, (EXCEPT THAT PART OF SAID LOT 77 LYING NORTHERLY OF A LINE DRAWN PARALLEL WITH THE NORTHERLY LINE OF SAID LOT 77 AND 40 FEET SOUTH FROM THE NORTHERLY LINE AS MEASURED ALONG THE EASTERLY LINE OF DEERE PARK DRIVE SOUTHEAST, AND EXCEPT THAT PART OF LOT 78 AFORESAID LYING SOUTHERLY OF THE LINE DRAWN PARALLEL TO THE NORTHERLY LINE OF SAID LOT 78 AND 55 FEET SOUTHERLY THEREOF, AS MEASURED ALONG THE EAST LINE OF DEERE PARK DRIVE SOUTHEAST), IN LAKE COUNTY, ILLINOIS.

PARCEL 2: THOSE PARTS OF LOTS 1 AND 2 IN COHEN'S RESUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 1207747 ON NOVEMBER 18, 1963, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE BEGINNING ON THE WESTERLY LINE OF SAID LOT 1, 4.83 FEET NORTHERLY OF THE SOUTHWESTERLY CORNER THEREOF; THENCE EASTERLY ALONG A STRAIGHT

LINE 200.81 FEET, MORE OR LESS, TO A POINT 7.70 FEET NORTHERLY OF THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF SAID LOT 2 WITH THE TOP OF BLUFF MEANDER LINE IN LOT 77 IN BAIRD AND WARNER, INC. ADDITION TO DEERE PARK SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 290930 ON DECEMBER 4, 1926; THENCE EASTERLY ALONG A LINE 7.70 FEET NORTHERLY OF AND PARALLEL WITH SAID SOUTHERLY LINE OF LOT 2 TO THE WATER'S EDGE OF LAKE MICHIGAN IN THE EAST QUARTER OF SECTION 31, TOWNSHIP 43 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF HIGHLAND PARK, IN LAKE COUNTY, ILLINOIS.

Permanent real estate index number: 17-31-302-051-0000.

- (ii) The real property commonly known as: 2494 Bay Isle Drive, Weston, Florida, legally described as follows:

LOT 44, BLOCK 6 OF SECTOR 7-PARCELS F,G,H, I, I-1, I-2, I-3, I-4, K-1 & K-2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 156, PAGE 23, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

Property index number: 5039 13 03 1850

Property folio number: 0913-03-1850.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

FORFEITURE ALLEGATION TWO

The SPECIAL MARCH 2004 GRAND JURY further charges:

1. The allegations contained in Counts 25 and 26 of this Indictment are realleged and incorporated herein by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(1).

2. As a result of his violations of Title 18, United States Code, Sections 1956 and 1957 as alleged in the foregoing Indictment,

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defendant herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section, 982(a)(1), any and all right, title and interest in any property, real and personal, involved in such offenses, and any property traceable to such property.

3. The interests of the defendant subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(1), include: all money and other property that represents the subject of the transactions and all money and other property that is traceable thereto, including, but not limited to, approximately \$1,000,000.

4. If any of the funds subject to forfeiture and described above, as a result of any act or omission of the defendant:

- (a) Cannot be located upon the exercise of due diligence;
- (b) Have been transferred or sold to, or deposited with, a third party;
- (c) Have been placed beyond the jurisdiction of the Court;
- (d) Have been substantially diminished in value; or

- (e) Have been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property including but not limited to the following property, under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1):

- (i) The real property commonly known as: 57 South Deere Park Drive, Highland Park, Illinois, legally described as follows:

PARCEL 1: LOTS 77 AND 78 IN BAIRD AND WARNER, INC. ADDITION TO DEERE PARK SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE SOUTHEAST FRACTIONAL QUARTER OF SECTION 31, TOWNSHIP 43 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH LOTS 13 AND 14 IN HILL AND STONE'S RAVINE VIEW SUBDIVISION IN SAID SOUTHWEST 1/4 OF SECTION 31 IN THE CITY OF HIGHLAND PARK; ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 1926 IN BOOK "Q" OF PLATS, PAGE 86, AS DOCUMENT 290930, (EXCEPT THAT PART OF SAID LOT 77 LYING NORTHERLY OF A LINE DRAWN PARALLEL WITH THE NORTHERLY LINE OF SAID LOT 77 AND 40 FEET SOUTH FROM THE NORTHERLY LINE AS MEASURED ALONG THE EASTERLY LINE OF DEERE PARK DRIVE SOUTHEAST, AND EXCEPT THAT PART OF LOT 78 AFORESAID LYING SOUTHERLY OF THE LINE DRAWN PARALLEL TO THE NORTHERLY LINE OF SAID LOT 78 AND 55 FEET SOUTHERLY THEREOF, AS MEASURED ALONG THE EAST LINE OF DEERE PARK DRIVE SOUTHEAST), IN LAKE COUNTY, ILLINOIS.

PARCEL 2: THOSE PARTS OF LOTS 1 AND 2 IN COHEN'S RESUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 1207747 ON NOVEMBER 18, 1963, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE BEGINNING ON THE WESTERLY LINE OF SAID LOT 1, 4.83 FEET NORTHERLY OF THE SOUTHWESTERLY CORNER THEREOF; THENCE EASTERLY ALONG A STRAIGHT LINE 200.81 FEET, MORE OR LESS, TO A POINT 7.70 FEET NORTHERLY OF THE POINT OF INTERSECTION OF

THE SOUTHERLY LINE OF SAID LOT 2 WITH THE TOP OF BLUFF MEANDER LINE IN LOT 77 IN BAIRD AND WARNER, INC. ADDITION TO DEERE PARK SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 290930 ON DECEMBER 4, 1926; THENCE EASTERLY ALONG A LINE 7.70 FEET NORTHERLY OF AND PARALLEL WITH SAID SOUTHERLY LINE OF LOT 2 TO THE WATER'S EDGE OF LAKE MICHIGAN IN THE EAST QUARTER OF SECTION 31, TOWNSHIP 43 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF HIGHLAND PARK, IN LAKE COUNTY, ILLINOIS.

Permanent real estate index number: 17-31-302-051-0000.

- (ii) The real property commonly known as: 2494 Bay Isle Drive, Weston, Florida, legally described as follows:

LOT 44, BLOCK 6 OF SECTOR 7-PARCELS F,G,H, I, I-1, I-2, I-3, I-4, K-1 & K-2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 156, PAGE 23, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

Property index number: 5039 13 03 1850

Property folio number: 0913-03-1850.

All pursuant to Title 18, United States Code, Section 982(a)(1).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY